



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/150146

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on September 19, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is functionally ineligible for IRIS waiver services effective June 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jill Speer

Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner has been enrolled as an IRIS participant. His primary diagnosis is autism spectrum disorder. There is also a possible diagnosis of pervasive developmental disability.

3. In 1999, the Petitioner's IQ score was determined to be 77 in a test administered by the Medical College of Wisconsin.
4. On April 25, 2012, the annual Long-Term Care Functional Screen (LTCFS) was completed for the Petitioner. Petitioner was found to need assistance at Level 1 for bathing. He was found to be independent with dressing, eating, mobility, toileting, transferring and use of telephone. He was found to need assistance at Level 2 with meal preparation, medication administration/management, money management, laundry and/or chores. He was noted to not drive due to physical, psychiatric, or cognitive impairment. He was also noted to have behaviors requiring interventions, specifically a "quick temper" and "occasional physical aggression/verbal aggression."
5. On May 6, 2013, the annual Long-Term Care Functional Screen (LTCFS) was completed for the Petitioner. Petitioner was found to be independent with bathing, dressing, eating, mobility, toileting, transferring, meal preparation, medication administration/management and use of telephone. Petitioner was found to need assistance at Level 1 with money management, assistance at Level 2 with laundry and/or chores. He was also noted to not drive at this time but he is working on getting it by next year. It was noted that he has no behaviors that require intervention.
6. On May 30, 2013, the agency issued a Notice of Action informing the Petitioner that he no longer meets the required level of care for the IRIS program.
7. On June 20, 2013, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The Family Care and IRIS programs, supervised by the Department of Health Services, are designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. The IRIS program is a self-directed care program that pays for home/community-based waiver and personal care services. It has been federally approved as a Medicaid waiver under § 1915(c) of the Social Security Act. The Wisconsin IRIS waiver document (0485.R0.100) states that IRIS is to be an alternative to Family Care, with the same requirements for applicant eligibility. See, Waiver, heading #2 – Brief Waiver Description, at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html>. Family Care eligibility is described in Wis. Admin. Code ch. DHS 10.

In order to qualify for FC/IRIS services, with certain exceptions not applicable here, a person's functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a). To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

2.01 Waiver Eligibility

Waiver program eligibility is established when the applicant meets all of the following criteria:

1. Meets the definition of an appropriate target group;
2. Meets a waiver-eligible level of care;
3. Resides in an eligible setting;
4. Meets the non-financial and financial eligibility criteria for Medicaid;
5. Meets any applicable requirements for Wisconsin residency, and
6. Is determined to need Medicaid waiver services.

Medicaid Home and Community-Based Services Waivers Manual § 2.01.

The Wisconsin Department of Health Services made efforts to improve the statewide accuracy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The screener met with the petitioner as part of the reassessment process. Current policy requires the Department's local agent/screener to then enter this data into the Department's functional screen computer program. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The Level of Care (LOC) Functional Screen form and program reiterate the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities.

Individuals under age 22 with a developmental disability may be served by the DD waiver, provided his condition meets the federal definition of a developmental disability and he meets the appropriate LOC. Whether an individual meets the federal definition can be determined by the Decision Tree for the "Intellectual/Developmental Disability Per Federal Definition" Target Group on WI Long Term Care Functional Screen which is found in the Manual at § 2.02 B.

The LTCFS program infrequently yields a result that is not consistent with state code. Wis. Admin. Code § DHS 10.33(2)(c) describes comprehensive (a/k/a nursing home) functional capacity:

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY.

(a) Determination. Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, ...

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

In this case, the screener determined in May, 2013 that the Petitioner could safely and appropriately perform all activities of daily living (ADLs). She also concluded the Petitioner needs assistance with two IADLs, specifically money management and laundry/chores. Based on these findings, the agency denied eligibility finding that the Petitioner does not meet the federal definition of an appropriate target group, specifically the Developmental Disability (DD) target group. In addition, when the petitioner's functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. The NH level of care is assigned to a child who has

“a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. This child requires an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs warrant nursing interventions or restorative services that require specialized training and monitoring that is significantly beyond that which is routinely provided to children.”

The Petitioner was found to be ineligible going forward, consistent with the DHS-directed result in the LTCFS.

In this case, the agency used the Decision Tree to determine that the Petitioner does not meet the federal definition of a developmental disability. The agency noted that the Petitioner does not have a diagnosis of mental retardation or an IQ of 75 or less. He does have a diagnosis of autism with onset before age 22 which is likely to continue indefinitely. The agency determined he does not have substantial functional limitations in three or more of these specified areas: capacity for independent living, self-care, receptive and expressive communication; learning; mobility; self-direction. Based on these findings, the agency concluded he does not meet the DD definition.

At the hearing, the Petitioner's parents testified and presented evidence on his behalf. The Petitioner's parents offered testimony to demonstrate that the Petitioner requires assistance with three ADLs: bathing, toileting and dressing. They testified that he would only bathe 2x/week without prompting and would forget to wear deodorant. With regard to dressing, he requires assistance with buttoning and tying his shoes. Regarding toileting, the Petitioner does not do a proper job of wiping and thus has soiled clothing several times/week. The Petitioner's parents also testified that in addition to money management and laundry/chores, the Petitioner requires assistance with meal preparation, specifically requiring prompts for preparing meals and reminders to turn off the stove. They further testified that he needs more extensive assistance with money management than the finding on the LTCFS. He can't make change, can't make or follow a budget and can't write checks or otherwise spend money appropriately. Further, the Petitioner's parents disagree with the conclusion of the agency that the Petitioner no longer has behaviors that require intervention. They concede his aggression has decreased but he exhibited aggression in recent months when he punched a hole in the wall at home.

Based on the evidence provided, I conclude the agency properly determined the Petitioner does not meet the criteria for the DD target group per the federal definition and does not meet the nursing home LOC. The evidence does not demonstrate that the Petitioner has *substantial* functional limitations in at least three of the areas specified in the federal definition criteria. In addition, I cannot conclude from the testimony that the Petitioner needs assistance that requires specialized training and monitoring that is *significantly* beyond that which is routinely provided to children with regard to bathing, toileting or dressing. I recognize that the Petitioner may need reminders to do a better job of bathing or toileting clean-up; however, the evidence suggests that he is able to appropriately and safely complete toileting and bathing. The assistance he requires is not substantial or extraordinary to the point that he would be at risk of institutionalization without the assistance.

CONCLUSIONS OF LAW

The agency properly concluded the Petitioner does not meet the criteria for the DD target group and nursing home level of care.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

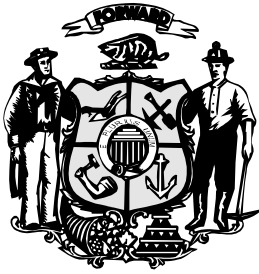
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of November, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 11, 2013.

Bureau of Long-Term Support